



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF FREDERICKSBURG
FOR
COOL SPRINGS ROAD CLOSED LANDFILL
Solid Waste Permit No. 032**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the City of Fredericksburg regarding the Cool Springs Road Closed Landfill, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "City" means the City of Fredericksburg, a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 10.1-1400.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Landfill" means Cool Springs Road Closed Landfill, located at 131 Cool Springs Road in Stafford, Virginia, which is owned and operated by the City of Fredericksburg
6. "LEL" means lower explosive limit.
7. "LGRP" means landfill gas remediation plan, which was included as Amendment 5 of the Facility Permit on September 15, 2009.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "Permit" means Solid Waste Permit (SWP) No. 032, which was issued under the Virginia Waste Management Act and the Regulations to the City on December 3, 1971.
11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.
15. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On December 3, 1971, the City was granted a permit to operate the Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. The Permit allows the City to operate a solid waste management facility in compliance with the Regulations.
2. The City operated the Facility as a sanitary landfill until its closure in 1996. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. On March 11, 2011, DEQ conducted a compliance inspection of the Facility, during which the Department observed compliance issues related to the failure of the City to follow the LGRP.

4. On April 8, 2011, the City notified DEQ that during an April 7, 2011, gas monitoring event, the Facility exceeded 100% of the LEL for methane at gas probe GMW-B.
5. 9 VAC 20-81-200(A)(1) requires that the City ensure that decomposition gases generated at the landfill are controlled and that the concentration of methane gas shall not exceed 25% of the LEL in landfill structures and 100% of the LEL at the facility boundary.
6. DEQ issued a WL to the City on May 5, 2011, for the violation described in paragraphs C4 through C5.
7. On May 12, 2011, DEQ received notification from the City that on May 3, 2011, the Facility detected methane gas exceedences in concentrations of 16.2% and 8.1% in gas monitoring probes GMW-B and GMW-2A respectively.
8. 9 VAC 20-81-200(C)(5) requires that the landfill shall notify the department of an exceedance of the compliance level or unusual condition that may endanger human health and the environment in accordance with 9 VAC 20-81-530.C.3.
9. 9 VAC 20-81-530(C)(3) requires the permittee to report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances.
10. On May 24, 2011, the Department issued a NOV to the City for the violations described in paragraphs C(7) through C(9) above.
11. On September 30, 2011, DEQ received notification from the City that on September 29, 2011, the Facility detected methane gas concentrations of 9.7%, 10.3%, and 9.9% in gas monitoring probes GMW-2A, GMW-A, and GMW-B respectively.
12. 9 VAC 20-81-200(A)(1) requires that the City ensure that decomposition gases generated at the landfill are controlled and that the concentration of methane gas shall not exceed 25% of the LEL in landfill structures and 100% of the LEL at the facility boundary.
13. On October 18, 2011, the Department issued a NOV to the City for the violations described in paragraphs C(11) through C(12) above.
14. Although not listed in the October 18, 2011, NOV, the exceedences reported at the Facility demonstrate a failure by the City to follow the LGRP incorporated in the Facility Permit as Condition I.G.5.
15. 9 VAC-20-81-100(B) requires that “[a]ll solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation, and in accordance with the approved design and intended use of the facility.”

16. On November 9, 2012, Representatives of the City met with DEQ to discuss the NOV's and the proposed plan to fix the compliance issues at the Facility. The City stated that it planned to install a force main from the condensate tank to the Stafford County's sanitary sewer located along the creek dividing the Facility site. The work was completed by March 1, 2012.
17. On February 15, 2012, May 17, 2012, and June 22, 2012, the City submitted drafts of a revised LGRP to DEQ.
18. On July 23, 2012, the City submitted the final required section of the revised LGRP requested by DEQ.
19. Based on the results of information provided by the City, the Board concludes that the City has violated 9 VAC 20-81-100(B), 9 VAC 20-81-200(A)(1), 9 VAC 20-81-200(C)(5), 9 VAC 20-81-530(C)(3), and Permit Condition I.G.5, as described in paragraphs C(3) through C(15) above.
20. The City has submitted documentation that verifies that the violations described in paragraphs C(3) through C(15), above, have been addressed and the City has plan in place to prevent future violations.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders the City, and the City agrees to pay a civil charge of \$13,965.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The City shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City for good cause shown by the City, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the City admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. The City consents to venue in the Circuit Court of the City of Fredericksburg for any civil action taken to enforce the terms of this Order.
5. The City declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the City to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the City. Nevertheless, the City agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the City has completed all of the requirements of the Order;
 - b. the City petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the City.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the City and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the City certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the City voluntarily agrees to the issuance of this Order.

Consent Order

City of Fredericksburg for the Cool Springs Road Closed Landfill- SWP No. 032

Page 7 of 8

And it is so ORDERED this 9th day of October, 2012.

A handwritten signature in black ink that reads "Thomas A. Faha". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Thomas A. Faha, Regional Director
Department of Environmental Quality

The City of Fredericksburg voluntarily agrees to the issuance of this Order.

Date: 8/31/12 By: Beverly R. Cameron, City Manager
(Person) (Title)
City of Fredericksburg

Commonwealth of Virginia

City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 31 day of August, 2012, by Beverly R. Cameron who is City Manager of the City of Fredericksburg on behalf of the City.

[Signature]

Notary Public
322740

Registration No.

My commission expires: November 30, 2014

Notary seal:

